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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

DENNIS L. O'CONNOR

Petitioner,

vs.

THE STATE OF NEVADA, et al.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether a state is entitled to a qualified rather than an absolute sovereign immunity from suit in a 42 U.S.C.§ 1983 civil rights action for failure to govern her governing state agencies and officials.

2. Whether a county prosecutor is absolutely immune from suit in a 42 U.S.C. § 1983 action for the malicious failure and neglect to investigate sworn criminal complaints.

3. Whether a municipal court judge in clear absence of all jurisdiction is absolutely immune in a 42 U.S.C. § 1983, 1985, and1986 action for the non-judicial and conspiratorial act of obstruction of justice by appearing as a *witness* for the prosecution during a trial de novo in substitution for witnesses required for cross-examination by the defendent.

4. Whether the Nevada State Bar *Corporation* functions autonomously from the state and is a *person* that can sue and be sued in civil rights actions.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The petitioner, Dennis L. O'Connor, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on August 24, 1982.

OPINIONS BELOW

The opinion of the Court of Appeals, not yet reported, appears in the appendix hereto, p. 1a, *infra*.

The opinion of the District Court for the District of Nevada, which appears in the appendix hereto, p. 4a, *infra*, is reported at 507 F. Supp. 546 (1981).

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on August 24, 1982. On September 22, 1982, the Ninth Circuit Court of Appeals entered an Order granting the petitioner's motion for a stay of the mandate. The Court of Appeals ordered that the petitioner file a petition for Writ of Certiorari with the Clerk of the Supreme Court of the United States on or before October 14, 1982 in order to stay the mandate until a final disposition by the Supreme Court of the United States, p. 14a, *infra*.

This petition is being docketed in this Court by October 14, 1982.

This Court's jurisdiction is invoked under 28 U.S.C.§ 1254(1).

QUESTIONS PRESENTED

1. Whether a state is entitled to a qualified rather than an absolute sovereign immunity from suit in a 42 U.S.C.§ 1983 civil rights action for failure to govern her governing state agencies and officials.

2. Whether a county prosecutor is absolutely immune from suit in a 42 U.S.C. § 1983 action for the malicious failure and neglect to investigate sworn criminal complaints.

3. Whether a municipal court judge in clear absence of all jurisdiction is absolutely immune in a 42 U.S.C. 1983, 1985, and1986 action for the non-judicial and conspiratorial act of obstruction of justice by appearing as a *witness* for the prosecution during a trial de novo in substitution for witnesses required for cross-examination by the defendent.

4. Whether the Nevada State Bar *Corporation* functions autonomously from the state and is a *person* that can sue and be sued in civil rights actions.

CONSTITUTIONAL PROVISIONS AND STATUTES

The constitutional provisions and statutes involved in this case appear in the Appendix hereto, at p. 15a - 18a, *infra.*

STATEMENT OF THE CASE

This is a suit seeking general and punitive damages from multiple defendants for the wreckless and malicious deprivation of constitutional rights. The defendants are the State of Nevada, the Nevada State Bar Corporation, Churchill County District Attorney John Hill, and Fallon Municiple Court Judge William Teurman. The City of Fallon is also a defendant although it has not as yet been dismissed by the lower court.

The jurisdiction of the District Court was invoked under 28 U.S.C.§ 1331, 1343 and 42 U.S.C.§ 1983, 1985, and 1986.

The petitioner, Mr. O'Connor, has been denied any semblance of due process of law, equal opportunity in the state courts, and equal protection of the laws in two criminal trials, two civil trials, and an appeal. The petitioner has also been denied equal protection of state statutory laws enacted

to protect individuals from corrupt actions of the state by and through her officials and agencies.

The heart of this entire action lies with the arbitrariness and vindictiveness of a city attorney who misused his public office in a conflict of interest between the duties of prosecutor and private counsel in civil litigation.

The petitioner and his wife have previously been before this Court on appeal from the State of Nevada in an action related to the petition herein. The papers were treated as a petition for a Writ of Certiorari which was denied for a want of jurisdiction. *O'Connor v. Palludan Corp.*, 101 S. Ct. 343 (1980). Petition for rehearing denied January 12, 1981, 101 S. Ct. 905 (1981).

The O'Connors brought that action on *appeal* to this court due to a denial of access to the Supreme Court of the State of Nevada pursuant to rule 46(b) of the Nevada Rules of Appellate Procedure which set forth the following:

> *Appearances in Proper Person; no party except a habeas corpus petitioner may appear in proper person before the Supreme Court.* (Nevada Revised Statutes, Vol. 2, p. 1433 1979).

That rule has since been modified. However, the petitioner and his family have been financially and irreparably damaged due to the abuse of due process by the State of Nevada by and through her agency the Supreme Court of the State of Nevada.

The O'Connors also raised the issue of the Seventh Amendment of the Federal Constitution and its application to the State of Nevada by and through the *Northwest Ordinance of 1787* on appeal before this Court in *O'Connor v. Palludan Corp., supra.* The dispute over the Seventh Amendment between the O'Connors and the State of Nevada did not involve the amount of persons on the jury. Rather, it involved the right to a common law jury trial in an eviction proceeding particularly when the O'Connors had

been granted an in forma pauperis application. The Third Judicial District Court of Nevada granted a summary eviction and denied the O'Connors a jury trial implying that there was no right to a jury trial in an eviction proceeding. The O'Connors filed all of the necessary subsequent motions to set aside and vacate the judgment on the grounds that a genuine dispute of a construction eviction which had merged into a fraud action remained. All of the motions were denied.

The petitioner and his wife had owned and operated a pizza restaurant in Fallon, Nevada for four years before being forced out of business by the lessors, the Palludan Corp., and counsel for that corporation, the Fallon City Attorney.

On April 19, 1978 the O'Connors filed suit against the Palludan Corporation for a breach of contract in failing to provide a habitable building by the terms of the lease and in compliance with the Nevada state laws. The suit was filed after considerable effort to get the Palludan Corporation to comply with the terms of the lease. The Palludan Corporation retained the Fallon City Attorney to represent them in the civil suit.

On August 2, 1978 the Fallon City Attorney had the petitioner arrested by two members of the Fallon police department for allegedly allowing minors to loiter in an establishment licensed for the distribution of alcohol. O'Connor was arrested outside his pizza building as he was unlocking the door to open for the evening business. The warrant was dated the day after O'Connor had attempted to complain to the city council of police harassment in his pizza business which had started since the city attorney was retained by the Palludan Corporation. O'Connor was on the agenda to speak to the council about the city attorney's conflict of interest. The Fallon City Attorney intervened during the meeting and advised O'Connor that he would not be allowed to speak due to the fact that criminal charges were

pending against him. O'Connor inquired as to the nature of the charges. The Fallon City Attorney assured him that the charges had been filed by the Fallon police department that day. O'Connor immediately checked with the assistant chief of police who advised him that there were no charges pending against him with the Fallon police department and that the complaint was coming from the Fallon City Attorney's office.

The warrant was signed by the Fallon municiple court judge William Teurman, a respondent herein, and was not supported by oath or affirmation by the arresting officers.

During the municipal court hearing, O'Connor was represented by his attorney of record at the time who moved the court to dismiss the complaint due to the vagueness of the ordinance and its obvious misapplication to Mr. O'Connor. O'Connor had received prior approval from the Fallon City Council allowing minors on the premises of his business when alcohol was being served. The only limitation that had been put on O'Connor was not to serve alcoholic beverages to minors. No minors were ever arrested out of O'Connor's establishment for the consumption of alcohol.

The alleged loiterers, witness for the prosecution, overwhelmingly established Mr. O'Connors innocence during the municipal court trial. However, the municipal court judge found O'Connor guilty nonetheless.

O'Connor then appealed to the Third Judicial District Court of Nevada. The judge was a former law partner of the Fallon City Attorney.

As a result of the testimony of the witnesses for the prosecution during the municipal court hearing, the Fallon City Attorney did not present them for cross-examination at the criminal trial de novo in the Third Judicial District Court of Nevada.

The petitioner's attorney moved the court for a dismissal on the grounds that no oath or affirmation had

been submitted in either court supporting the probable cause for O'Connor's arrest, the Fallon municipal ordinance was vague and to liberally construe it would be wrong, and that the prosecution witnesses were not there for cross-examination. The Fallon City Attorney then asked for a recess. Upon reconvening, the prosecution called the municipal court judge to give heresay testimony in substitution for the witnesses that had been cross-examined by Mr. O'Connor's attorney in the municipal judge's court. The judge for the Third Judicial District Court allowed this testimony by the municipal court judge even though he declared from the bench at the commencement of the trial that it was to be trial de novo and what had transpired in the municipal court would have no bearing on his decision. However, the district court found O'Connor guilty on *circumstantial evidence*. Pursuant to Article VI, Section 6 of the Nevada State Constitution, the state district court has final appellate court jurisdiction in cases arising in the inferior court tribunals.

Two civil trials subsequently ensued between the Palludan Corporation and the O'Connors, the latter of which was filed by the Palludan Corporation against the O'Connors for non-payment of rent. The O'Connors requested a corrected trial transcript during the second civil trial. Much of the pertinent testimony and the judge's decision as had been read from the bench had been omitted or changed. The court reporter refused to make the corrections which were necessary in order for the O'Connors to prove their counterclaim of constructive eviction in the second civil trial. Mr. O'Connor advised two district court judges in open court of the changes, one of which admitted that he saw error in the record but took no action. The O'Connors filed sworn criminal complaints with the local sheriff's office who forwarded them on to the county district attorney, John Hill, a respondent herein. The district attorney never contacted the O'Connors nor did he conduct an investigation.

The O'Connors were bombarded with civil litigation from the Fallon City Attorney over power bills from the city that were partly owed by the Palludan Corporation as well as the suit for non-payment of rent. They eventually were driven out of business and reached a point where they could no longer afford legal counsel and began pro se representation in the primitive common law self-help, self-defense method.

After the O'Connors were out of business, the Palludan Corporation secured a $12,000.00 building permit from the City of Fallon and proceeded to complete the building to the specifications that had been promised to the O'Connors but breached. The Palludan Corporation had done this for unjust enrichment as they began collecting nearly three times the rent from the new tenants that had been paid by the O'Connors. The O'Connors immediately filed a motion in opposition to the summary judgment on the grounds that the constructive eviction had merged into one of fraud for unjust enrichment.

The O'Connors demand for a jury trial pursuant to the Seventh Amendment of the Federal Constitution was denied.

The Supreme Court of Nevada dismissed the O'Connors appeal for failure to obtain counsel even though the O'Connors submitted the names of several attorneys to the court who had refused to represent the O'Connors before the Supreme Court in forma pauperis. The Supreme Court of Nevada also failed, refused, and neglected to exercise its discretion and appoint counsel.

The O'Connors have lost approximately $125,000.00 in equity and assets as well as loss to their excellent credit standing and their reputation.

The Palludan Corporation padlocked the O'Connors out of the building and would not allow the O'Connors to remove their equipment and miscellaneous items. The

Palludan's dispersed the O'Connor's property at will and without the consent of the O'Connors.

Consequently, the O'Connor's children have had their inheritance feloniously confiscated by and through an abuse of process in the state courts due to the denial of the right to a common law jury trial and the inalienable right to protect one's property on appeal in the proper person. The Palludan Corporation and the City of Fallon have several liens against the home of the O'Connors and the Fallon City Attorney has attached the petitioner's wages in the past.

It is significant to relate the fact that the O'Connors filed complaints with every investigative agency within the state. Each agency sent the O'Connors on to another agency claiming a lack of jurisdiction in the matter. In other words, they all passed the buck. The O'Connors filed a complaint with the Nevada State Bar Corporation against the Fallon City Attorney for conflict of interest and numerous other ethical rule violations during the aforementioned civil litigation. The Nevada State Bar counsel did not investigate and advised the O'Connors to file a complaint with the local district attorney. The local district attorney never contacted the O'Connors after the sworn criminal complaints were forwarded on to him by the sherrif's office. The O'Connors attempted to contact him by telephone but he never returned the calls. The Nevada State Attorney General's office claimed a lack of jurisdiction and said the matter should be investigated by the local district attorney. The petitioner and his wife also filed complaints with the Commission of Judicial Discipline of Nevada who also responded with a lack of jurisdictional claim. As a last resort, the O'Connors sought an inquiry from the Federal Bureau of Investigation who informed them that unless there was actual evidence that the judge took a pay-off, the said agency lacked jurisdiction. The O'Connors informed the bureau that they had witnessed the Fallon City Attorney meet privately in chambers with the judge during a recess of the two day civil

trial and just prior to the decision being read from the bench. The O'Connors attorney was not present at this covert meeting as he was in the courtroom reviewing his notes and preparing his summation.

During the 1981 session of the Nevada State Legislature the petitioner testified before several committees on all of the aforementioned facts. As a result of that testimony, rule 46(b) of the Nevada Rules of Appellate Procedures, *supra*, has been modified, *infra*, but it still does not comply with the intent of the framers of the Nevada State Constitution who included the provision of the inalienable right of self-representation in any court within the State of Nevada as is verified in the record of the constitutional debates and proceedings of 1864. The Nevada State Legislature (1981) also passed a joint resolution to amend Article VI, Section 21 of the Nevada State Constitution for improving the performance of the Commission of Judicial Discipline.

The measures taken by the Nevada State Legislature may improve the over-all performance of the state in the future, however, it does not remedy the petitioner's financial loss or the loss to his reputation. The State of Nevada continues to claim an Eleventh Amendment privilege from suit.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION BELOW CONFLICTS WITH THE COURT'S DECISION IN *MAINE V. THIBOUTOT*, 488 U.S. 1 (1980)

Both of the decisions in the courts below have neglected to give any consideration to the petitioner's arguments regarding this court's decision in *Maine v. Thiboutot, supra*. The district court makes a slight reference to it on page 548

of *O'Connor v. the State of Nevada, et al.*, 507 F. Supp. 546 (D. Nev. 1981). The Court of Appeals has made no reference to it whatsoever. For this reason, the Court should grant the writ. *Monroe v. Pape*, 365 U.S. 167 (1961). The Court of Appeals did find that it was error for the lower court to decide the Seventh Amendment issue thus affirming the petitioner's contention that the state is in fact liable for deliberately failing to include the right to a common law jury trial during the framing of her constitution and in violation of the *Northwest Ordinance of 1787*. However, the Court of Appeals apparently also found that the Eleventh Amendment of the Federal Constitution exempts the states from complying with the Federal Bill of Rights due to this court's decision in *Quern v. Jordan*, 440 U.S. 332 (1979).

Not so curiously, the petitioner's challenge of rule 46(b) of the Nevada Rules of Appellate Procedure has gotten lost in the quick shuffle between the Supreme Court of the State of Nevada, the Supreme Court of the United States, and the Federal District Court for the District of Nevada. The petitioner had included the issue in the original complaint in the action herein. While on appeal to the Supreme Court of the United States in *O'Connor v. Palludan Corp., supra,* the petitioner filed an amended complaint in this action and dropped the 46(b) claim with the intention of filing a supplemental pleading should this court deny the appeal. Whereas, this Court treated the papers as a petition for a Writ of Certiorari rather than an appeal which was dismissed for a want of jurisdiction, the petitioner filed a motion to file a supplemental pleading including the 46(b) issue on February 11, 1981 which was denied in a minute order on April 22, 1982 by the Federal District Court. Therefore, the main issue in this case is not appealable herein. Had the O'Connors been able to represent themselves on appeal to the Supreme Court of Nevada, most of the causes of action in the civil right's suit herein would have become moot and the state would have provided the remedy for the O'Connor's financial loss. Accordingly, the right to a common law jury trial by and

through the *Northwest Ordinance* and the Seventh Amendment of the Federal Constitution would have also provided the remedy. However, this court has eliminated the remedies set forth in the Federal Bill of Rights in its decision of *Quern v. Jordan, supra.*

In Nevada, governmental immunity has fostered legal plunder. None of the state agencies by and through her agents will take action against the governing. Governmental immunity suppresses the truth and oppresses the innocent in Nevada. The ruling members of Nevada's despotic aristocracy observe a *Code of Omerta* rather than a *Code of Professional Responsibility* or a *Code of Judicial Canons.*

There are no federally protected rights in the State of Nevada due to the Eleventh Amendment of the Federal Constitution. The right to due process and equal protection of the laws and the provision of rights in the Nevada State Constitution are nullified by the Court's interpretation of the Eleventh Amendment of the Federal Constitution. The equality of *rights* on a non-discriminatory basis are a matter of mere privileges for the citizens of Nevada and are granted by the grace of the state only. The state's constitutional declaration of rights is a dead letter as there is no one to enforce those provisions.

The petitioner has suffered great financial and personal loss through the malicious misuse of the state courts and there is no remedy. The perpetrators are shielded by the court's absolute judicial immunity and the state's sovereign immunity.

The failure of the states to enforce the laws on the books is exactly why the Civil Rights Act of 1871 was passed. *Monroe v. Pape, supra.*

The concept of immunity was to protect honest officials from error in judgment. It was never intended to conceal corrupt acts. This Court found that it was better to risk some error than not to decide or act at all. *Scheurer v. Rhodes*, 416 U.S. 232 (1974) at 242.

Yet, this is exactly what the State of Nevada and all of her officers and agencies have done, they did not act at all. Should it be necessary to name nearly every governing official in the state in this suit? For if one is to blame, all are to blame. The state is the fountain head and the supreme authority and therefore it is her responsibility to govern her governing.

Chief Justice John Jay defined sovereignity as *the right to govern* in *Chisholm v. Georgia*, 2 U.S. 419 (1793) at 472.

None of Nevada's agencies or officers have asserted a good faith immunity because the misuse of the disuse of the state law, the state constitutional law, and the federal constitutional law was not done in good faith.

The Court found that *a state is a person* when she denies to any person within *her* jurisdiction the equal protection of the laws. Whoever by virtue of his public position under a state government deprives another of life, liberty, or property without due process of law, or denies or takes away the equal protection of the laws, violates the inhibition; and as he acts in the name of the state, and is clothed with *her* power, his act is *her* act. Otherwise, the inhibition has no meaning and the state has clothed one of *her* agents with the power to annul or evade it. *Ex Parte Virginia*, 100 U.S. 339 (1879). Note: Eight years after the passage of the Civil Rights Act of 1871.

In *Maine v. Thiboutot, supra*, the Court found that the Title 42 U.S.C.§ 1983 remedy broadly encompasses violations of federal statutory as well as constitutional law. The constitutional *law* referred to by the Court obviously encompasses the Federal Bill of Rights and the Fourteenth Amendment of the Federal Constitution.

The Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents. *Federalist Paper, No. 78*, by Alexander Hamilton.

It is the duty and the prerogative of the federal govern-

ment to guarantee to every citizen due process and equal protection of the state laws by and through the Fourteenth Amendment of the Federal Constitution.

It is the duty of the states to enforce the provisions of the Supreme Law of the Land pursuant to Article VI, Par. (2) of the United States Constitution.

In Article I, Section 2, of the Nevada State Constitution, Nevada has assumed a subordinate position to the federal government.

The integrity of a state is no greater than the integrity of those she entrusts to manage her affairs; she is one among equals. Her entitlement to governmental immunity should be no greater than that to those individuals or agencies she employs to govern. Therefore the State of Nevada is entitled to a good faith qualified immunity only.

The State of Nevada has defeated the theory that a lack of official immunity and the threat of liability in civil rights suits would deter her governing officials' willingness to execute their state official duties with the decisiveness and the judgment required by the public good.

Making the state governments liable for malicious and wreckless civil rights deprivations would close the floodgates on civil rights abuses and accordingly would reduce the necessity of civil rights actions.

The State of Nevada voluntarily waived a lack of jurisdictional claim over the subject matter when she failed to govern her governing. A damage remedy is appropriate, since there are no available forms of relief. *Davis v. Passman*, 442 U.S. 228 (1979).

II.

THE DECISION BELOW REGARDING ABSOLUTE PROSECUTORIAL IMMUNITY CONFLICTS WITH THE COURT'S DECISION IN *SCHEURER V. RHODES*, 416 U.S. 232 (1974).

This 1871 civil rights action is brought against the county prosecutor for failing to initiate an investigation into criminal charges that were filed by the O'Connors against local public officials. The prosecutor never contacted the O'Connors nor did he attempt to conduct any type of investigation. The Court of Appeals has affirmed the district court decision that the prosecutor and respondent in this action is absolutely immune for doing absolutely nothing. However, the Court has found that the immunity of officers of the executive branch of a state government for their acts is not absolute but qualified and of varying degree, depending upon the scope of discretion and the responsibilities of the particular office and the circumstances existing at the time the challenged action was taken. *Scheurer v. Rhodes, supra.*

The respondent has not asserted a good faith claim of immunity. The acts complained of by the petitioner were not in a prosecutorial capacity. Rather, the acts complained of are of a police/investigative nature. Based upon the above-mentioned facts, the respondent is entitled to qualified immunity only.

This conflict justifies the grant of the writ to review the opinion and judgment below.

III.

THE DECISION BELOW REGARDING ABSOLUTE IMMUNITY FOR *WITNESSES* IN STATE JUDICIAL PROCEEDINGS CONFLICTS WITH THE COURT'S DECISION IN *BRADLEY V. FISHER*, 13 Wall. 335 (1871).

The lower courts have set a most disturbing precedent in granting the motion to dismiss of respondent Municipal Court Judge William Teurman on the grounds that he is absolutely immune from suit as a *witness* in a state judicial proceeding. This decision must be overturned or the Eleventh and Fourteenth Amendment rights of the Federal Constitution will have no force and effect in the state court proceedings of Nevada and might influence the procedure in other states as well.

The Court of Appeals has affirmed the District Court decision that *witnesses* in state judicial proceedings are to be given absolute immunity from suits under the Civil Rights Act or under a *Bivens*-type remedy. However, this Court did not decide nor affirm the so-called *Bivens*-type remedy. *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

The respondent-judge was not a *witness* to the alleged crime for which the petitioner herein was being tried in the state district court. Nor had the respondent been subpoenaed by the prosecution. The respondent-judge appeared as a substitution witness for those prosecution eyewitnesses that testified at the municipal court hearing of which the same judge had presided. These excluded prosecution eyewitnesses which appeared in municipal court had supported the innocence rather than the guilt of the petitioner and therefore were not called by the prosecution during the trial de novo even though their testimony was absolutely indispensable for a criminal conviction. The respondent-judge testified to the ages of the persons he had found guilty in his court for allegedly loitering in the establishment of the petitioner

herein. The denial of the Sixth Amendment right to cross-examine the witnesses that had appeared in the lower court is an egregious violation of fundamental fairness. Such conduct by the state government constitutes prima facie evidence of deprivation of due process. Constitutional error in a criminal trial can be held harmless only if the court is able to declare belief that it was harmless beyond a reasonable doubt. *Clark v. Blackburn* (5th. Cir.) 632 F. 2d 531 (1980).

The State of Nevada, by and through her agency the Third Judicial District Court of Nevada, has not asserted a good faith defense based upon harmless error or otherwise. Nevada state rules of criminal procedure make no provisions for the appearance of a municipal court judge, clothed with the authority of his office, to appear in criminal trials de novo to give heresay testimony as to what had transpired in his court. This is an absolute abuse of judicial power in a non-judicial act of conspiracy to obstruct justice.

The respondent-judge also violated the petitioner's Fourth Amendment right of the United States Constitution when he issued a warrant for the arrest of the petitioner that was not supported by oath or affirmation by anyone. Nevada State Law does provide that no warrant shall issue but upon probable cause supported by oath or affirmation. In the Fourteenth Amendment, provision against any state denying to any person within its jurisdiction, equal protection of the laws, the quoted phrase includes the right to be tried and punished in the same manner as others accused of crime are tried and punished . . . *U.S. v. Lynch*, 94 F. Supp. 1011 (1950).

The lower court has classified the appearance of the respondent-judge in the criminal trial de novo of the petitioner as that of *citizen-witness*. The petitioner maintains the appearance of the respondent-judge in the said trial was that of *judge-conspirator* in clear absence of all jurisdiction. Where there is clearly no jurisdiction over the subject matter, any authority exercised is a usurped authority, and for the exer-

cise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. *Bradley v. Fisher,* 13 Wall. 335 (1871).

IV.

THE DECISION BELOW CONFLICTS WITH THE COURT'S DECISION IN *COUNTY OF LINCOLN V. LUNING,* 133 U.S. 529 (1890), REGARDING THE ABSOLUTE IMMUNITY OF THE NEVADA STATE BAR CORPORATION

The Nevada Bar is not a state agency but rather is a public corporation which can sue and be sued. NRS. 7.275 and NSCR 76.

It has long been decided that municipal corporations in Nevada have no Eleventh Amendment protection. *County of Lincoln v. Luning, supra.* It is held to be a municipal corporation within the meaning of Article VIII, Section 1 of the Nevada State Constitution. In *re Scott,* 292 Pac. 291 (1930).

The lower court has found that the Nevada Bar could not be sued pursuant to 42 U.S.C.§ 1983 if it was a state agency. *Ginter v. State Bar of Nevada,* 625 F. 2d 829 (CA 9 1980). In reading the decision, heavy reliance was placed on *Quern v. Jordan, supra.* The Eleventh Amendment decision in that case was based upon the state treasury being the source of funds for payment. However, Article IX, Section 4 of the Nevada State Constitution says:

> *The state shall never assume the debts of any county, town, city or other corporation whatever, unless such debts have been created to repel invasion, suppress insurrection or to provide for the public defense.*

In *Monell v. Department of Social Services,* 436 U.S. 658 (1979), the court found that municipal corporations are persons within the meaning of 42 U.S.C.§ 1983.

The petitioner has been denied equal protection of the disciplinary rules by the Nevada State Bar Corporation. Thus, a claim properly lies against the said corporation and respondent herein.

Disciplinary rules do not arise out of controversy which must be adjudicated, but instead out of a need to regulate conduct for the protection of all citizens. *Supreme Court of Virginia v. Consumers Union of the United States,* 446 U.S. 719 (1980).

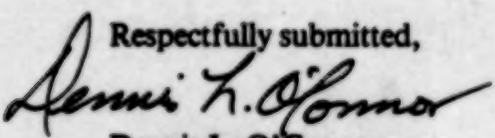
The Nevada State Bar Corporation operates autonomously and does not receive any state funding. Therefore, this respondent is not a state agency. (See Article VIII, Section 9, Nevada State Constitution.)

Finally, the decision below did not address the petitioner's issue of remedy. Is there no remedy?

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Ninth Circuit Court of Appeals.

Respectfully submitted,



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